

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEALS Nos. 3197 of 1999 to 3257 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA and

MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgement?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

HEIR OF DECD.KANA GABHRU  
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Appearance:

FIRST APPEALS NOS.3197/99 to 3226/99

MR PG DESAI, learned Govt.Pleader for appellants

FIRST APPEALS NOS.3227/99 to 3257/99

MR PREMAL JOSHI, learned Govt.Pleader for appellants

No one has appeared on behalf of the Caveators although  
the name of learned Counsel Mr.K.L.Dave has been shown in  
the Board as ordered on 21st December 1999.  
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CORAM : MR.JUSTICE M.R.CALLA and  
MR.JUSTICE PRADIP KUMAR SARKAR  
Date of decision: 24/12/1999

COMMON ORAL JUDGEMENT

All these First Appeals, 61 in number, are directed against the common order dated 30th November 1998 passed by the Joint District Judge, at Junagadh, in Land Reference Cases Nos.305/88 to 307/88, 359/88 to 368/88, 311/88 to 317/88, 451/88 to 466/88, 374/88, 375/88, 419/88 to 423/88, 425/88 to 435/88, and 331/88 to 337/88.

2. Whereas all these matters arise out of identical facts and the common judgment passed by the Reference Court is challenged on identical grounds, we propose to decide all these appeals by this common judgment and order as under:

3. For Machhundri Irrigation Scheme, the lands of the claimants situated in villages Khapat, Vadviyala, Girgadhda and Jaragli were sought to be acquired. For the purpose of acquisition, notifications under Section 4 were published between 1984 to 1987. After further proceedings under the Land Acquisition Act, the Land Acquisition Officer passed the award granting compensation for Bagayat (irrigated) land at the rate of Rs.100/-, Rs.130/- Rs.170/- i.e. per Bigha Rs.1600/-, Rs.2080 and Rs.2720/- for Jirayat (non-irrigated) land at the rate of Rs.70/-, 90/- and Rs.140/- i.e. per Are i.e. Rs.1100/-, Rs.1400/-, and Rs.2240/- per Bigha whereas the claimants had asked for the claim of Rs.1500/- per Are, i.e. Rs.24000/- per Bigha. A statement showing the details of the dates of notification under Section 4, the villages, and the rates etc. as produced by learned Asstt.Govt.Pleader is hereby made Schedule-A to this judgment which will be treated as a part of the judgment. The Land Acquisition Officer passed the award on the basis of the sale instances, and statements supplied by the Department. On behalf of the claimants, one Govind Lakhman of village Khapat was examined at Exh.13 in LRC No.305/88, one Pragji Vallabh of village Vadviyala was examined at Exh.15 in LRC No.311/88, one Lakha Uka of village Khapat was examined at Exh.23 in LRC No. 319/88, Bhapat Lakha village Girgadhda was examined at Exh.11 in LRC No.374/88, one Lakha Desha of village Girgadhda was examined at Exh.12 in LRC No.419/88, one Uka Hari of village Girdadhda was examined at Exh.11 in LRC No.425/88 and one Babu Lakhman of village Vadviyala was examined at

Exh.14 in LRC No.451/88. Registered Sale deed No.898 dated 14th August 1973 at Exh.13, sale deed No.1374 at Exh.18, both of village Vadviyala, sale deed No.706 dated 15th April 1985 of village Khapat at Exh.20 were produced in LRC No.305/88 and Lakhman Barad was examined at Exh.47 as expert evidence and the judgment of LRC No.205/91 was produced at Exh.46 in LRC 305/88. On behalf of the Department one Bhupatbhai Jamnadas Chaniyara, Deputy Mamlatdar was examined at Exh.40 in LRC No.305/88. Against the order as had been passed by the Land Acquisition Officer, when the matter was taken to the Reference Court under Section 18, the Reference Court had partly allowed the References and has passed an order that the claimants are entitled to get compensation at the rate of Rs.15,000/- per Bigha, i.e. Rs.937/- per Are for irrigated land and Rs.11,250/- per Bigha i.e. Rs.703/- per Are for non-irrigated land. An order has also been passed with regard to the other statutory and consequential benefits.

3. It is this order passed by the Reference Court which is under challenge before us. We find that, admittedly, the Land Acquisition Officer had relied upon the copies of the sale instances submitted by the acquiring department. Whereas neither any Vendor nor any Vendee had been examined in support of these sale instances by the Department, the same could not have been taken into consideration for the purpose of determining the market value and therefore, the Reference Court has found that the order passed by the Land Acquisition Officer based on sale instances which were not admissible according to the Supreme Court decisions, and therefore, rate at which the compensation had been awarded by the Land Acquisition Officer was not just and adequate. We find that this finding of the Reference Court is correct and does not warrant any interference. The Reference Court has rightly found that the market value as was fixed by the Land Acquisition Officer was not just and adequate.

4. It is also admitted position before this Court that a joint purshis was submitted that the land of villages Khapat, Vadviyala, Girgadhda and Jaragli were similar and mostly the products were also similar. According to this joint purshis, these villages are situated adjoining each other within a distance of 3 to 5 kms. The Reference Court has mentioned in the order that as per the Land Acquisition Officer, the lands of villages Khapat, Girgadhda, Vadviyala and Jaragli were more fertile than other villages, but in view of the joint purshis and expert evidence of Shri Barad, the

lands were taken to be similar and of the same fertility as of adjoining villages. We find that the decision has been taken in this regard on the basis of the joint purshis and once both the parties had given the joint purshis and the stand was taken that the lands of the villages Khapat, Vadviyala, Girgadhda and Jaragli were similar in situation as well as in the matter of products, the lands of these villages could certainly be taken to be identical in all respects. In this regard, the evidence including the expert evidence has been considered in detail by the Reference Court. The Reference Court has also considered the comparison of the market value for the land of village Kodia by the Extra Assistant Judge, Junagadh in LRC No.205/91 decided on 12th October 1998 in which case, the compensation at the rate of Rs.10,560/- per Bigha was granted for irrigated land and at the rate of Rs.7,920/- per Bigha was granted for non-irrigated land which comes to Rs.660/- and Rs.490/- respectively. This decision in the case of village Kodia in LRC No.205/91 was challenged by the State of Gujarat before this Court by filing First Appeal No.1320/99 and this appeal filed by the State was dismissed on 27th July 1999 by the Division Bench of this Court and this position is not disputed by learned Counsel for Government appearing in these cases. In LRC No.205/91 which has been relied upon by the Reference Court, the notification under Section 4 was issued on 6th February 1978 and the notification under Section 6 was issued on 31st March 1978 whereas in the instant cases, the notifications under Section 4 were issued during the period between 1984 to 1987 as aforesaid. Once the lands which were the subject matter of acquisition in LRC No.205/91 are found to be identical to the lands which are subject matter of the appeals in the present case, keeping in view the dates with regard to the issuance of the notification under Section 4, i.e. in the case of LRC No.205/91 to be of 1978 and in the instant cases during the period between 1984 to 1987, if the Reference Court has passed the order awarding compensation at the rate of Rs.937/- per Are for irrigated land and Rs.703/per Are in respect of the non-irrigated land as against the rates at which the compensation was granted in LRC No.205/91 at the rate of Rs.660/- per Are for irrigated land and at the rate of Rs.495/- per Are in respect of the non-irrigated land, by no stretch of imagination, the same could be said to be unreasonable, more particularly in view the dates of 1978 on which the notifications under Section 4 were issued in LRC No.205/91 and in the years 1984-1987 in the present cases. The decision of the Reference Court in LRC No.205/91 has also been upheld by this Court while

5. For the aforesaid reasons, we do not find any reason or justification to interfere with the impugned order passed by the Reference Court and all these 61 First Appeals fail. The same are hereby dismissed. No order as to costs.

SCHEDULE- ' A '

[illegible][illegible]

4.	3217/99 to 3232/99	16	451/88 to 466/88	129/84	-do-	10/04/86	70
-	100/-	703/-	937/-				
5.	3233/99 to 3234/99	2	374/88 to 375/88	121/84	Girgadhda	28/02/85	10
-	170/-	703/-	937/-				
6.	3235/99 to 3239/99	5	419/88 to 423/88	82/84	-do-	28/03/86	140
-	170/-	703/-	937/-				
7.	3240/99 to 3247/99	8	425/88 to 432/88	4/86	-do-	30/04/86	140
-	170/-	703/-	937/-				
8.	3248/99 to 3250/99	3	433/88 to 435/88	81/84	-do-	29/11/84	140
-	170/-	703/-	937/-				
9.	3251/99 to 3257/99	7	331/88 to 337/88	2/86	Jargali	10/03/86	90
-	130/-	703/-	937/-				

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